

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Marsha D. Aulick,

Plaintiff

Civil Action 2:12-cv-00029

v.

Judge Frost

**Michael J. Astrue, Commissioner
of Social Security,**

Magistrate Judge Abel

Defendant.

ORDER

This matter is before the Court on the Commissioner's October 9, 2012 objections (ECF No. 19) to Magistrate Judge Abel's September 24, 2012 Report and Recommendation (ECF No. 18). The Court, having reviewed the record *de novo*, determines that this case should be remanded to properly evaluate the medical source opinions of Dr. North and the state agency physicians under the legal criteria set forth in the Commissioner's Regulations and Rulings and as required by case law and to properly consider plaintiff's obesity in light of SSR 02-01p. The Court further finds for the reasons set out below that the Commissioner's objections to the Report and Recommendation are without merit.

The Commissioner's Objections. Defendant argues that plaintiff failed to set forth any evidence that her excess weight imposed limitations that would preclude a reduced range of sedentary work. Dr. North diagnosed plaintiff with weight gain rather than

obesity, and he never prescribed weight loss as part of her treatment. Defendant maintains that there is substantial evidence that plaintiff's weight did not cause limitations beyond those identified by the administrative law judge. The administrative law judge noted that plaintiff was able to perform many activities of daily living and that there was no documentation of a gait disturbance.

Defendant also argues that the administrative law judge provided a sufficient rationale for rejecting the opinion of Dr. North on the basis that his extreme limitations were not well supported. Defendant maintains that the administrative law judge essentially attacked the consistency of Dr. North's opinion with the record evidence. As a result, the Commissioner contends that remand is not warranted.

Discussion. Here, the administrative law judge's decision does not contain a discussion of plaintiff's obesity, and the administrative law judge failed to fully evaluate her obesity in accordance with SSR 02-1p. The Ruling provides that an assessment should be made to determine the effect obesity had on an individual's ability to perform routine movement and physical activity within the work environment. SSR 02-1p. An adjudicator must consider the impact of a claimant's obesity on the claimant's residual functional capacity, but the administrative law judge failed to do so. Because the administrative law judge failed to comply with the guidelines for evaluating obesity as set forth in SSR 02-01p, this case is REMANDED.

The administrative law judge gave "very little weight" to the opinion of treating physician Dr. North, finding that Dr. North provided no documentation or reasoning

for his assessment that plaintiff is limited to less than 20 minutes of standing and walking at one time and less than 30 minutes of sitting at one time. (PageID 75.) Although the administrative law judge assigned "great" weight to the assessments of the state agency physicians, Drs. McCloud and Teague, the administrative law judge concluded that plaintiff could perform only sedentary work. Dr. McCloud, however, opined that plaintiff could perform light work. By adopting some but not all of the limitations found by Dr. McCloud, the administrative law judge failed to clearly articulate the rationale underlying his decision. On remand, the administrative law judge should clearly articulate his basis for rejecting Dr. North's opinion and articulate what evidence he accepted or rejected when making his disability finding.

Upon *de novo* review in accordance with the provisions of 28 U.S.C. § 636(b)(1)(B), the Court **ADOPTS** the Report and Recommendation. This case is **REMANDED**.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE

